STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	**)**
	)
RAY FORRESTER,	**)**
	)
Complainant,	**)**
	)
and	**)Charge No: 2001 CF 0290**
	)EEOC No: 21 BA 02872
	)ALS No: 11695
RAULAND-BORG CORPORATION,	**)**
	)
Respondent.	**)**

RECOMMENDED ORDER AND DECISION

This matter is before me on Respondent's Motion for Summary Decision. Respondent has filed a written motion along with affidavits and exhibits. Complainant has filed a response along with affidavits and exhibits and Respondent has filed a reply. The record indicates the motion has been properly served upon the Illinois Department of Human Rights. This matter is ready for decision.

Respondent's Contentions

Respondent contends that summary decision should be granted because Complainant cannot establish a prima facie case of race discrimination. Respondent further contends that, even if Complainant can establish a prima facie case, he cannot establish that Respondent's articulated reason for discharging him was pretextual.

Complainant's Contentions

Complainant contends that summary decision must be denied because he can establish a prima facie case of race discrimination and he can prove that employer's reasons for terminating him was a pretext for race discrimination.

Conclusions of Law

1. Complainant is a person aggrieved under the Illinois Human Rights Act, 775 ILCS 5/1-101 et. seq.
2. The Illinois Human Rights Commission has jurisdiction over this Complaint.
3. There is no evidence in the record demonstrating that Respondent's reason for discharging Complainant was pretextual.
4. There are no genuine issues of material fact as to whether the reason articulated by Respondent for discharging Complainant was a pretext for race discrimination.

Discussion

Complainant filed a Charge of discrimination against the Respondent with the Illinois Department of Human Rights (Department) on August 7, 2000. The Department filed a Complaint on behalf of the Complainant with the Illinois Human Rights Commission on January 17, 2002, alleging Complainant to have been aggrieved by practices of race discrimination in violation of the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 et. seq.

A Complainant bears the burden of proving discrimination by a preponderance of the evidence, in accordance with the Act at 775 ILCS 8A-102(I). Typically, the Complainant may prove discrimination through indirect means by establishing a prima facie case of unlawful discrimination pursuant to the three part analysis set out in **McDonnell Douglas Corp. v. Green**, 411 U.S. 793, 93 S.Ct. 1817 (1973) and **Texas Dept. of Community Affairs v. Burdine,** 450 U.S. 248, 101 S. Ct. 1089 (1981), adopted by the Illinois Supreme Court in **Zaderaka v. Illinois Human Rights Commission**,131 Ill.2d 172, 545 N.E.2d 674 (1989).

Once the Complainant has demonstrated a prima facie case, the employer then has the burden of articulating a legitimate, non-discriminatory reason for the adverse employment action. If the employer carries its burden of production, the presumption of discrimination drops and the Complainant is required to meet his continuing burden of proving by a preponderance of the evidence that the employer's articulated reason was not its true reason, but rather, merely a pretext for discrimination. **St. Mary's Honor Center v. Hicks**, 509 U.S. 502, 113 S. Ct. 2742 (1993). The burden of proving that the employer engaged in discrimination remains at all times with the Complainant. **Burdine**, *supra.*

Complainant's prima facie case

In general, in order to make a prima facie case of race discrimination, the Complainant must show that (1) he is a member of a protected class, (2) he suffered an adverse employment action, and (3) similarly situated employees outside of the protected class

were treated more favorably. **Dixon and Borden Chemical**, 46 Ill. HRC Rep. 116 (1985); **Sheffield and Wilson Sporting Goods Co**., __Ill. HRC Rep.__, (1990CF1450, May 7, 1993); **St. Mary of Nazareth Hospital Center v. Curtis**, 163 Ill.3d 566 (1987); **Freeman United Coal Mining Co. v. Human Rights Comm'n,** 173 Ill App.3d 965 (1988); **ISS International Service System, Inc. v. Illinois Human Rights Commission**, 272 Ill.App.3d 969, 651 N.E.2d 592, (1995).

It is undisputed that Complainant is a member of a protected class in that he belongs to a racial minority (black) and that Complainant suffered an adverse employment action when he was discharged on July 21, 2000.

The facts related to the third prong — that similarly situated employees outside of the protected class were treated more favorably—are also undisputed. Respondent hired Complainant as a Technician in January 1996 and subsequently promoted him to Production Supervisor in January 2000. Complainant was discharged on July 21, 2000 following a complaint of sexual harassment alleged against him by a female employee.

Complainant argues that a similarly-situated white manager was treated more favorably than he when confronted with a similar accusation of sexual harassment because Respondent hired an outside investigator to investigate the allegations against the white manager and concluded from the investigator's report that the allegations were unfounded.

Complainant contends that he was not afforded an outside investigator in response to the allegations against him and, therefore, did not have a similar opportunity to vindicate himself, therefore the white manager was treated more favorably.

Respondent does not dispute these facts; however, Respondent explains that it hired an outside investigator in that case because the accusations were made in 1995 for alleged sexual conduct that had occurred three years before in 1992.

In viewing these facts in the light most favorable to the Complainant, Complainant has put forth evidence that he may have been treated less favorably than the white manager in that an outside investigator, who presumably conducted a more expert and more thorough investigation into the allegations, was hired in response to the allegations against the white manager; therefore, Complainant has put forth a prima facie case of race discrimination.

Respondent's articulation

The inquiry next proceeds to whether Respondent has articulated a legitimate non - discriminatory reason for discharging Complainant . Once Respondent has articulated a legitimate, non-discriminatory reason for its actions, it is no longer relevant whether Complainant has established a prima facie case, since — once Respondent makes this articulation — the issue becomes whether the articulated reason is a mere pretext for discrimination. **Ruffin and South Shore YMCA**, 33 Ill. HRC Rep. 64 (1987); **Clyde v. Human Rights Comm'n**, 206 Ill App.3d 283 (4th Dist.1990).

Respondent contends that an employee, Ms. Davis, made a written complaint alleging Complainant had made verbal sexual comments to her and had sent sexually explicit e-mails to her in February 2000. Davis made the complaint between July 17-20, 2000, and Respondent conducted an investigation around July 21, 2000. Respondent submits an affidavit and memorandum documenting its investigation into the allegations against Complainant. A team of three management personnel interviewed Ms. Davis as to the allegations and, based on their report, the President of Respondent and another manager subsequently interviewed Complainant. As a result of the report and the interviews, Respondent's President concluded that Complainant had violated the company's sexual harassment policy and made the decision to discharge him. Respondent has articulated a legitimate non-discriminatory reason for its discharge decision.

Complainant's showing of Pretext

Next, Complainant must establish that Respondent's articulated reason is a pretext for race discrimination. A Complainant may establish pretext either directly, by offering evidence that a discriminatory reason more likely motivated the employer's actions, or indirectly, by showing that the employer's explanations are not worthy of belief. **Burnham City Hospital v. Illinois Human Rights Commission**, 126 Ill. App.3d 999, (4th Dist. 1984). A Complainant may demonstrate that the proffered reason has no basis in fact; the proffered reason did not actually motivate the decision; or the proffered reason was insufficient to motivate the decision. **Grohs v. Gold Bond Products**, 859 f.2d 1283 (7th Cir. 1988). Further, a Complainant may show pretext by demonstrating

that non-black employees involved in comparable misconduct were retained while the Complainant was discharged, **Loyola University of Chicago v. Illinois Human Rights Comm'n**, 500 NE.2d 639, 149 Ill.App.3d 8 (1st Dist. 1986).

Complainant argues pretext by contending that he was treated less favorably than a similarly charged white manager who was provided with an outside investigator. The investigator interviewed several witnesses and thus made a thorough investigation which resulted in his being absolved of the harassment charges. In contrast, Complainant argues that he was not provided with such a service and, therefore, the investigation of the allegations against him was not conducted fairly and thoroughly.

Complainant's argument focuses on attacking the investigation and presents no support that Respondent did not have a good faith reason for its decision. Complainant does not dispute that Davis made a complaint to Respondent concerning his alleged sexual misconduct nor does he dispute the specific allegations by Davis that he made sexually explicit verbal comments or that he sent sexually explicit e-mails to Ms. Davis. Complainant merely argues that the sexually explicit e-mails were requested by Ms. Davis, welcomed by her and were sent to her outside of the workplace.

Complainant submits no evidence to dispute Respondent's articulation that it conducted an investigation -- which included an interview with Ms. Davis, an interview with the Complainant and a review of sexually explicit e-mails allegedly sent by Complainant to Ms. Davis -- and determined from this investigation that Complainant, a supervisory

employee, had violated its sexual harassment policy. In reviewing a disciplinary decision of an employer, the Commission will not sit as a superpersonnel agency. **Johnson and Board of Education of Gurnee School District No. 56**, __ Ill. HRC Rep. __, (1997CF0394, January 12, 1999). It is well settled that the Respondent make take personnel action for good reason, bad reason, reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason. The correctness of the reason is not important as long as there is a good faith belief by Respondent in its decision. **Holmes v. Board of County Commissioner, Morgan County**, 26 Ill.HRC Rep. 63 (1986).

Complainant cites no legal authority and points to no company policy which mandates that Respondent hire outside experts to investigate every allegation of sexual harassment in order to render the investigation fair, valid or credible. Also, Complainant submits no evidence to dispute Respondent's explanation that it hired an outside investigator to examine the allegations against the white manager because of the three - year time period which had lapsed between the time the alleged harassment occurred and the time it was reported to Respondent. Showing an investigation could have been improved is not sufficient to establish discrimination if a Complainant cannot show that the employer failed to act in good faith. **Lenoir v. Roll Coaster, Inc.**, 13 F.3d 1133 (7th Cir. 1994).

In reviewing the facts in the record in the light most favorable to the Complainant, and while drawing all reasonable inferences in his favor, there are no issues of fact as to whether the Respondent's articulated reason for discharging

Complainant was motivated by Respondent's conclusion that Complainant had violated its sexual harassment policy and not by his race. Therefore, there are no genuine issues of material fact remaining and Respondent is entitled to judgment as a matter of law.

This matter is being considered pursuant to Respondent's Motion for Summary Decision. A summary decision is analogous to a summary judgment. **Cano v. Village of Dolton**, 250 Ill. App. 3d 130, 620 N.E.2d 1200 (1st Dist. 1993). A motion for summary decision should be granted where there is no genuine issue of material fact and the moving party is entitled to a recommended order in its favor as a matter of law. **Strunin and Marshall Field & Co.**, 8 Ill. HRC Rep. 199 (1983).

Paragraph 8-106.1 of the Illinois Human Rights Act, 775 ILCS 5/101-1 et. seq., specifically provides that either party may move, with or without supporting affidavits, for a summary order in its favor. If the pleadings and affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a recommended order as a matter of law, the motion must be granted. The Commission has adopted the standards used by the Illinois courts in considering motions for summary judgment for motions for summary orders, and the Illinois Appellate Court has affirmed this analogy. **Cano v. Village of Dolton**, 250 Ill App. 3d 130, 620 N.E.2d 1200, 189 Ill. Dec. 833 (1st Dist. 1993).

As there are no issues of material fact as to whether Respondent's decision to discharge Complainant was motivated by legitimate non-discriminatory reasons, Respondent's motion for summary decision must be granted.

RECOMMENDATION

Accordingly, I make the following recommendations:

1. That summary decision in favor of the Respondent be granted;
2. That this matter be dismissed with prejudice.

HUMANRIGHTS COMMISSION

By: _____

ENTERED: January **, 2003**

SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section